

§ 70.803

27 CFR Ch. I (4–1–16 Edition)

any trade secrets, processes, operations, apparatus, confidential data, or any other matter prohibited by statutes such as but not limited to 26 U.S.C. 6103 or 18 U.S.C. 1905.

(g) *Comments received in response to a notice of proposed rulemaking.* (1) The Bureau will post written comments received in response to a notice of proposed rulemaking to the appropriate rulemaking docket on the Regulations.gov Web site at <http://www.regulations.gov>. The Bureau reserves the right not to post lengthy paper comments or attachments requiring scanning, although a notice regarding the receipt of any such non-posted comments or attachments will be made to Regulations.gov. TTB will not post duplicate or anonymous comments to Regulations.gov.

(2) All comments and attachments received in response to a notice of proposed rulemaking may be inspected by any person in the Bureau's public reading room by appointment during normal business hours. Copies of comments (or portions thereof) also may be obtained. Appointment and copy requests may be addressed to the appropriate TTB officer in writing to the Alcohol and Tobacco Tax and Trade Bureau, Washington, DC 20220, or by telephone at 202-453-2270. A person requesting copies should allow a reasonable time for processing the request. The provisions of 31 CFR 1.7, relating to fees, apply to requests made in accordance with this paragraph.

(27 U.S.C. 205; 22 U.S.C. 2778; 26 U.S.C. 7602; 5 U.S.C. 301)

[T.D. ATF-47, 43 FR 10687, Mar. 15, 1978, as amended by T.D. ATF-57, 44 FR 20794, May 9, 1979; T.D. ATF-201, 50 FR 12533, Mar. 29, 1985; T.D. ATF-249, 52 FR 5961, Feb. 27, 1987. Redesignated and amended by T.D. ATF-378, 61 FR 29955, 29956, June 13, 1996; T.D. ATF-450, 66 FR 29030, May 29, 2001; T.D. TTB-91, 76 FR 5482, Feb. 1, 2011]

§ 70.803 Requests or demands for disclosure in testimony and in related matters.

(a) *Authority.* The provisions of this section are prescribed under the authority of 5 U.S.C. 301; section 2 of Reorganization Plan No. 26 of 1950 (64 Stat. 1280); 12 U.S.C. 3412; 18 U.S.C. 1905; section 2(g) of the Federal Alcohol Ad-

ministration Act (27 U.S.C. 202(c)); and sections 5274, 6103, 7213, 7803 and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 5274, 6103, 7213, 7803 and 7805).

(b) *Definitions.* The following definitions apply whenever the defined terms appear in this section.

(1) *TTB officer or employee.* The terms *TTB officer* and *TTB employee* mean all officers and employees of the United States, engaged in the administration and enforcement of laws administered by the Alcohol and Tobacco Tax and Trade Bureau, and appointed or employed by, or subject to the directions, instructions or orders of, the Secretary of the Treasury or his delegate.

(2) *TTB records or information.* The terms *TTB records* and *TTB information* mean any records (including copies thereof) or information, made or obtained by, furnished to, or coming to the knowledge of, any TTB officer or employee while acting in his official capacity, or because of his official status, with respect to the administration of laws administered by or concerning the Alcohol and Tobacco Tax and Trade Bureau.

(3) *Demand.* The term *demand* means any subpoena, notice of deposition either upon oral examination or written interrogatory, or other order, of any court, administrative agency, or other authority.

(c) *Disclosure of TTB records or information prohibited without prior approval of the appropriate TTB officer.* The disclosure, including the production, of TTB records or information to any person outside the Department of the Treasury or to any court, administrative agency, or other authority, in response to any request or demand for the disclosure of such records or information shall be made only with the prior approval of the appropriate TTB officer. However, nothing in this section restricts the disclosure of TTB records or information for which the appropriate TTB officer has determined that the disclosure is authorized under any provision of statute, Executive order, or regulations, or for which a procedure has been established by the Administrator. For example, this section does not restrict the disclosure of TTB records or information under

§ 71.22, nor does it restrict the disclosure of TTB records or information which is requested by U.S. attorneys or attorneys of the Department of Justice for use in cases which arise under the laws administered by or concerning the Alcohol and Tobacco Tax and Trade Bureau and which are referred by the Department of the Treasury to the Department of Justice for prosecution or defense.

(d) *Delegation of authority to determine disclosure and establish procedures.* The appropriate TTB officer is hereby authorized to determine whether or not TTB officers and employees will be permitted to disclose TTB records or information in response to:

(1) A request by any court, administrative agency, or other authority, or by any person, for the disclosure of such records or information; or

(2) A demand for the disclosure of such records or information.

(3) The Administrator is also authorized to establish such other procedures as he or she may deem necessary with respect to the disclosure of TTB records or information by TTB officers and employees. Any determination by the appropriate TTB officer as to whether TTB records or information will be disclosed, or any procedure established by the Administrator in connection therewith, must be made in accordance with applicable statutes, Executive orders, regulations, and any instructions that may be issued by the Secretary. Notwithstanding the preceding provisions of this paragraph, the appropriate TTB officer shall, where either the Secretary or such officer deems it appropriate, refer the opposing of a request or demand for disclosure of TTB records or information to the Secretary.

(e) *Procedure in the event of a request or demand for TTB records or information—*(1) *Request procedure.* Any TTB officer or employee who receives a request for TTB records or information, the disposition of which is not covered by a procedure established by the Administrator, must promptly communicate the contents of the request to the appropriate TTB officer. The officer or employee must await instructions from the appropriate TTB officer concerning the response to the request.

(2) *Demand procedure.* Any TTB officer or employee who is served with a demand for TTB records or information, the disposition of which is not covered by a procedure established by the Administrator, must promptly, and without awaiting appearance before the court, administrative agency, or other authority, communicate the contents of the demand to the appropriate TTB officer. The TTB officer or employee must await instructions from the appropriate TTB officer concerning the response to the demand. If it is determined by the appropriate TTB officer that the demand should be opposed, the U.S. attorney, his or her assistant, or other appropriate legal representative shall be requested to respectfully inform the court, administrative agency, or other authority that the appropriate TTB officer has instructed the TTB officer or employee to refuse to disclose the TTB records or information sought. If instructions have not been received from the appropriate TTB officer at the time when the TTB officer or employee is required to appear before the court, administrative agency, or other authority in response to the demand, the U.S. attorney, his or her assistant, or other appropriate legal representative must be requested to appear with the TTB officer or employee upon whom the demand has been served and request additional time in which to receive such instructions. In the event the court, administrative agency, or other authority rules adversely with respect to the refusal to disclose the records or information pursuant to the instructions of the appropriate TTB officer, or declines to defer a ruling until instructions from the appropriate TTB officer have been received, the TTB officer or employee upon whom the demand has been served must, pursuant to this section, respectfully decline to disclose the TTB records or information sought.

(3) *Affidavit required for testimony.* If testimony of an TTB officer or employee is sought by a request or demand on behalf of a party other than a State in any case or matter in which the United States is not a party, an affidavit, or if that is not feasible, a statement shall be submitted. The affidavit or statement shall be prepared by

the party (or party's attorney) seeking the testimony, and shall set forth a summary of the testimony sought and its relevance to the proceedings. The affidavit or statement must be submitted before permission to testify may be granted. The appropriate TTB officer may, upon request and for good cause shown, waive the requirement of this paragraph.

(4) *Time limit for serving request or demand.* The request or demand, together with the affidavit or statement (if required by paragraph (e)(3) of this section), must be served at least 5 working days prior to the scheduled date of testimony or disclosure of records, in order to ensure that the appropriate TTB officer has adequate time to consider whether to grant the request or demand. The appropriate TTB officer may, upon request and for good cause shown, waive the requirement of this paragraph.

(5) *Factors to be considered in determining whether a request or demand will be granted.* The appropriate TTB officer must consider whether granting the request or demand would be appropriate under the relevant rules of procedure and substantive law concerning privilege. Among the requests or demands that will not be granted are those that would, if granted, result in—

(i) The violation of a statute, such as 26 U.S.C. 6103 or 7213, or a rule of procedure, such as the grand jury secrecy rule (F.R.Cr.P. Rule 6(e)), or a specific regulation;

(ii) The disclosure of classified information;

(iii) The disclosure of a confidential source or informant, unless the TTB officer or employee and the source or informant, have no objection;

(iv) The disclosure of investigative records compiled for law enforcement purposes if enforcement proceedings would thereby be impeded, or of investigative techniques and procedures whose effectiveness would thereby be impaired, unless the appropriate TTB officer determines that the administration of justice requires disclosure;

(v) The disclosure of trade secrets without the owner's consent; or

(vi) Testimony in a case in which TTB has no interest, records or other official information.

(f) *State cases.* The appropriate TTB officer, may, in the interest of Federal and State law enforcement, upon receipt of demands or requests of State authorities, and at the expense of the State, authorize employees under their supervision to attend trials and administrative hearings in liquor, tobacco, firearms, or explosives cases in which the State is a party or on behalf of the State in any criminal case, to produce records, and to testify as to facts coming to their knowledge in their official capacities. However, in cases where a defendant in a criminal case requests or demands testimony or the production of TTB records or information, authorization from the appropriate TTB officer is required. Production or testimony may not divulge information contrary to 26 U.S.C. 6103 and 7213, or 12 U.S.C. 3412. See also 18 U.S.C. 1905.

(g) *Penalties.* Any TTB officer or employee who disobeys the provisions of this section will be subject to dismissal and may incur criminal liability.

[T.D. ATF-57, 44 FR 27094, May 9, 1979, as amended by T.D. ATF-302, 55 FR 47325, Nov. 13, 1990. Redesignated by T.D. ATF-378, 61 FR 29955, June 13, 1996, as amended by T.D. ATF-446a, 66 FR 19089, Apr. 13, 2001; T.D. ATF-450, 66 FR 29030, May 29, 2001; T.D. TTB-91, 76 FR 5482, Feb. 1, 2011]

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